

U.S. Department
of Transportation

United States
Coast Guard



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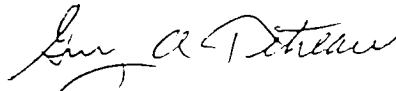
16716

17 March 1998

From: Commander, Eighth Coast Guard District
To: Distribution

Subj: LOADLINE REGULATIONS AND DOMESTIC VOYAGES; CLARIFICATION OF
REGULATIONS RELATIVE TO BARGES TRANSITING BEYOND THE
BOUNDARY LINE

1. Enclosure (1) is forwarded for your information and use.


G.A. TETREAU
By direction

Encl: (1) COMDT (G-MOC-2) MOC Policy ltr 2-98 16716 of 10 Feb 98

Dist: All Eighth District MSOs and MSU

U.S. Department
of Transportation

United States
Coast Guard



Commandant
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16716
MOC Policy Letter
MOC 2-98

FEB 10 1998

From: Commandant (G-MOC)
To: Distribution

Subj: LOADLINE REGULATIONS AND DOMESTIC VOYAGES; CLARIFICATION OF
REGULATIONS RELATIVE TO BARGES TRANSITING BEYOND THE
BOUNDARY LINE

Ref: (a) 46 USC §5102
(b) 46 CFR §42.03-5(B)(v)

1. Recent revisions to the statutory language governing loadline requirements in reference (a) have eliminated the exemption opportunity vessels previously enjoyed from the wording in reference (b). Specifically, reference (b) exempted vessels conducting round-trip domestic "coastwise" voyages, without visiting another U.S. port, from the requirement to have a loadline.
2. The confusion between the revised statute (reference (a)) and the present regulations (reference (b)) is due to the regulations being based on repealed legislation. Since the authority for regulations come from a statutory source, the statute currently in effect holds precedence. Reference (a) does not allow loadline exemptions for vessels sailing beyond the boundary line, except on a one-time, case-by-case, basis.
3. Until the regulations are revised to reflect the statutory change, the interpretation in enclosure (1) will stand as the official Coast Guard policy regarding this issue.

A handwritten signature in cursive script, reading "J. E. Schrenner".
J. E. SCHRENNER
By direction

Encl: (1) G-LMI memo 16716 to Commander, CG Pacific Area dated 11 August 1997

Distribution: All District (m) Offices
Marine Safety Center
Marine Safety School
USCG/ABS Liaison Officer
USCG/MSL Liaison Officer



Memorandum

Subject: REQUEST FOR LEGAL OPINION: LOADLINE
REGULATIONS AND DOMESTIC VOYAGES

Date: AUG 11 1997
Reply to: 16716
Attn. of: G-LMI
LT Canty
267-0098

From: Chief, Office of Maritime and International Law

To: Commander, Coast Guard Pacific Area

Ref: (a) Commander, Pacific Area memo 16716 of 18 Oct 96
(b) COMDT (G-LMI) ltr 5948 of 25 May 76

1. By reference (a), you requested a legal opinion as to whether an unmanned 160 foot flatdeck barge, displacing 900 tons, is subject to loadline regulations while making round trips between San Diego Harbor and an off-shore dumping location approximately nine miles south of San Diego.¹ Your request was prompted by inconsistencies discovered by your staff between the current statutes and the implementing regulations. These inconsistencies are primarily a result of references in Coast Guard regulations to terms and requirements found in repealed statutes, but not in the statute currently in force.

2. As you noted in your request, the applicable statute, 46 U.S.C. § 5102(b)(6) exempts from the load line requirements set out in 46 U.S.C. Chapter 51, those U.S. vessels on a "domestic voyage" that do not cross the "boundary line."² 46 U.S.C. § 5101(1) defines the term domestic voyage as "movement of a vessel between places in, or subject to the jurisdiction of, the United States. . . ." The term boundary line refers to a line established to divide the inland (also termed internal) waters of the U.S. from the high seas. See 46 U.S.C. § 2102(3) and 33 U.S.C. § 151.³ Thus, under the plain language of 46 U.S.C. § 5102, a U.S. vessel that voyages only between places in the inland waters of the U.S. is not subject to load line requirements. On the other hand, a vessel that crosses out of U.S. inland waters during its voyage, such as the vessel in question, would not appear to be exempt from load line requirements and must be assigned load lines in order to operate legally pursuant to 46 U.S.C. § 5103.

¹ Although your request does not say so explicitly, I assume from the context of your letter that the vessel in question is registered in the United States.

² I also assume for this discussion that the vessel in question is not exempt from the load line requirements for some other reason listed in 46 U.S.C. § 5102 such as the application of an international agreement to which the U.S. is a party.

³ The term boundary line is further defined in 46 C.F.R. 7.5 (c) as generally being "... lines drawn following the general trend of the seaward, highwater shorelines and lines continuing the general trend of the seaward, highwater shorelines across entrances to small bays, inlets and rivers."

3. 46 C.F.R. Subchapter E contains the regulations pertaining to load lines. In particular, the issue you raise is discussed in 46 C.F.R. § 42.03-5(b)(v). That section exempts from the load line requirements those vessels "engaged exclusively in voyages on waters within the United States or its possessions and which are determined not to be 'coast wise'. . . voyages." There is no definition of a "coastwise" voyage in the applicable regulation or statute.⁴ As you discuss in your request, the phrase "coastwise" voyage is most likely a relic of a repealed statute as the language in 46 C.F.R. § 42.03-5(b)(v) has not been revised since it was initially promulgated in 1968. At that time, the applicable statute, 46 U.S.C. § 88, did contain a definition of the term "coastwise voyage." The current load line requirements in 46 U.S.C. Chapter 51 replaced those promulgated under the Coastwise Loadline Act, 46 U.S.C. § 88, in 1986 when the old act was repealed. The repealed 46 U.S.C. § 88 defined the term "coastwise voyage by sea" as "a voyage on which a vessel in the usual course of her employment proceeds from one port or place in the United States or her possession to another port or place in the United States or her possessions and passes outside the line dividing inland waters from the high seas. . . ."

4. In reference (b), the Chief Counsel interpreted the language of 46 U.S.C. § 88 to mean that, for a voyage to be considered a coastwise voyage, the voyage must include a visit to at least one port. ("Because the . . . vessels return to the place of their departure without visiting any other port, they do not fit within either [coastwise or foreign voyage] category.") Thus, if one were to apply the Chief Counsel's interpretation of the repealed 46 U.S.C. § 88 to the still effective 46 C.F.R. § 42.03-5(b)(v), a vessel voyaging exclusively within U.S. waters that does not call at a port other than the port of origin would not be engaging in a "coastwise voyage" and, hence, load line requirements would not apply. Note that, under the old statute, whether or not a voyage crossed the boundary line was irrelevant.

5. However, any interpretation of the regulations must be governed by the statute currently in effect and not one that has been repealed. The extensive degree of the overhaul of the load line requirements in 1986 is clearly evidenced in the legislative history. In 1986, Pub. L. 99-509 (the Omnibus Budget Reconciliation Act of 1986), Title V, section 5101(2) repealed the provisions of the Coastwise Loadline Act and established the current uniform vessel load line standard for most U.S. vessels. The legislative history for the Reconciliation Act does not speak to the purpose of the language currently codified in 46 U.S.C. Chapter 51. However, the House Conference Report accompanying the Reconciliation Act, House Conference Committee Report No. 99-1012, stated that the House version of the bill (H.R. 5300) contained a provision that in large part consisted of H.R. 1362, which was a stand alone bill to modify the load line requirements. Therefore, although H.R. 1362 did not pass as a stand-alone bill, the House report for H.R. 1362 is helpful for purposes of determining legislative intent as the wording of the bill was adopted wholesale into the larger Reconciliation Act, which promulgated the load line requirements in Chapter 51. That House Report discussed the purpose of the original H.R. 1362 and clearly shows the substantial change in the law contemplated by the new law: "Existing U.S. law contains two separate sets of load line requirements: one set for U.S. vessels operating domestically (46 App. U.S.C. 88), and another set for U.S. vessels operating on foreign voyages and for

⁴ The term "coastwise voyage" should not be confused with the definition of "coastwise trade" as determined by the United States Customs Service. Generally, "coastwise trade" is considered to be the transportation of passengers or merchandise between places in the United States.

foreign vessels operating in U.S. waters (46 U.S.C. 86). This legislation combines the two sets of requirements into one uniform system." Additionally, the discussion in the report regarding 46 U.S.C. § 5102 lists the sources of the new law as including 46 U.S.C. § 88. This indicates that when the committee drafted the new section, it was well aware of the then existing exemption for coastwise voyages as set out in 46 U.S.C. § 88. The fact that the committee was aware of the previous exemption for coastwise voyages, and deliberately did not adopt similar language in the new law, strengthens the argument that this previous exemption from load line requirements no longer applies.

6. As a result of the extensive overhaul of the load line statutes, it is not prudent to carry over the definition of a term such as "coastwise" to govern the interpretation of the current regulations, especially when the term is no longer used in the current statute. Although the interpretation in reference (b) would seem to exempt the vessel in question from the load line requirements, as discussed above, that interpretation based on a repealed statute cannot be relied on as applicable. Therefore, 46 C.F.R. § 42.03-5(b)(v) must be interpreted solely on the basis of the current statute, 46 U.S.C. § 5102(b)(6). The plain language of that statute clearly exempts from the load line requirements only those U.S. vessels voyaging solely between places in the inland waters of the U.S. without ever transiting across the boundary line. A regulatory provision cannot exceed the authority granted by the underlying statute. Any regulation, such as 46 C.F.R. § 42.03-5(b)(v), that purports to do so is considered "ultra vires" and void. Hence, as the vessel in question transits from a place inside the inland waters of the U.S. to a place outside the inland waters by voyaging to and from San Diego Harbor to an offshore dumping location approximately nine miles offshore, under 46 U.S.C. § 5102(b)(6), the vessel is not exempt from load line requirements and should not have been granted a permit to operate without a load line.

7. Your request has highlighted a serious inconsistency between the current regulations and the underlying authorizing statute. I am forwarding your memo along with this reply to the appropriate offices at headquarters with the suggestion that a rule making project be undertaken to update the regulations to comply with the current load line authority.



DAVID J. KANTOR
Acting

Copy: COMDT (G-MOG), (G-LRA)
MSC
PACAREA (Pm)
MSO San Diego
LANTAREA